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Round Table

A Case in Admiralty

The April luncheon and meeting of the Round Table was held on Saturday, April 6th, at the Electric Club. Our own faculty was represented by the speaker of the day, Donald Campbell, A.B., LL.B., who is Professor of Law of Partnership and Corporations at Chicago-Kent. Professor Campbell is the junior member of a Chicago firm which has a large practice in admiralty.

The subject of his talk was, "A Case in Admiralty." Professor Campbell started in as the cigars were nicely lighted and the coffee cool enough to sip. Mr. Campbell said, "The jurisdiction of the Federal Courts in admiralty and maritime law is given by the Federal Constitution, and the judiciary legislation." The advantages of admiralty as to remedies and the simplicity of procedure were pointed out. The substance of his talk was as follows:

"The broad test of the boundary of admiralty jurisdiction is limited to acts and contracts pertaining to rights and duties of commerce and navigation. There are modifications of this rule which tend to define the boundaries with more nicety. The action may be in tort or in contract. The act which is the basis of the action must fall within the test rule stated above.

"Take for example, a tug boat in the Chicago River engaged in navigation, and let us assume that the tug boat has an accident in which it strikes the Clark Street Bridge. The bridge is controlled and operated by the City of Chicago. The accident was caused by the negligence of the tug boat, and the question now presents itself as to whether or not the City of Chicago can maintain an action in a court of admiralty to enforce payment of damages to the bridge by the tug boat.

"We apply the rule—was the City engaged in navigation? It was not, and the City will therefore have to rely on the common law for its remedy. But suppose we alter the facts, and show that

the bridge operator wrongfully kept the bridge down after proper signals from the tug to raise it. There is an accident, and the tug boat wishes to sue the City of Chicago in admiralty. We will apply the test again—was the tug engaged in navigation? As the question is in the affirmative, we may say the tug boat may sue the City of Chicago in admiralty.

"The owner of a launch which was navigating in the lagoon of Lincoln Park had occasion to assault and punish two small boys who had taken his tender. This was a tort committed on navigable waters on board a ship engaged in navigation whereupon an action was started against the owner of the launch in admiralty.

"A ship is being built upon the docks and the material entering into the construction thereof has not been paid for according to the contract. Will a suit in admiralty lie? No, in this instance as far as the boat was concerned it has never engaged in navigation and as it stands upon the docks in the eyes of the court it might as well be a house. But should the boat be launched, then as soon as it touches the water it becomes a fit subject for admiralty jurisdiction, and should it subsequently be taken into a dry dock for repairs, according to contract, admiralty would have jurisdiction of such contract for repairs.

"Let us start a suit in admiralty and trace it through the usual procedure. Suit is started by the filing of a libel which is in the nature of a bill, and the party bringing the suit is called the 'libellant.' The lawyers are called 'proctors.' A summons is issued, called a 'monition' and is served by the marshal. Answer to the libel is made by the 'respondant.'

"A libel has its formal parts much as a bill in equity, and corresponds to the declaration in a common law action. The libel should state the nature of the cause, the names and residence of the parties, and be followed with a prayer for relief and process.

"The libel is in *rem* or in *personam*. If the libel is in *rem* it must state that the property which is to be seized is within the district, whereupon the marshal seizes the property which is usually a ship. If libel is in *personam* the action is therefore against the owners of the vessel and not against the vessel itself, as in the case of a libel in *rem*.

"The answer should respond explicitly and distinctly to the allegations of the libel and should either admit or deny them, and should allege such facts as the respondent relies upon as a defense.

"Either party may file interrogatories and have sworn answers thereto. All pleadings and particularly interrogatories should be positive and explicit. This tends to narrow the issues in the case, and as the pleadings are usually less formal than corresponding pleadings in either equity or common law, the issues are more narrowly defined.

"If libel is in *rem*, the *res*, which is usually a ship, should be served by the marshal tacking a monition on prominent parts of the ship—usually the bridge and the gangway—and a custodian of the ship takes the ship in charge.

"If the libel is in *personam*, the owners of the ship are served, and if the owners have been served they may limit the amount of their libel to the value of the vessel which caused the damage by having the vessel appraised and by putting up a bond acceptable to the other party. This, in substance, limits the amount of recovery in any event to the appraised value of the ship. The principle of limitation of liability perhaps originated from the old common law principle that the damages ought to be measured by the value of the object which caused them.

"There is a further theory, however, to the effect that when an owner has equipped a ship and has put it in the custody of a master and his crew, he ought not to be held liable for greater damages than the capital he has invested in his enterprise, so that shipping and

thereby trade and commerce, may be encouraged, if he loses his ship and has losses sufficient to justify no further expenditure by himself.

"The case comes on for hearing and is heard by a judge of the District Court. The question of liability is decided and then the case is referred to a commissioner to fix the damages. Because of the technical nature of proving damages, it is quite convenient and almost necessary that damages be proved in this way.

"In deciding the liability, the court is not governed by the common law rule that contributory negligence is a bar to the plaintiff's action, and therefore where the damage is a result of the negligence of both ships involved in a tort case, the court may divide the damages and require each boat to pay one-half the damage done, to the other, but where there has been an accident and damage through the clearly perceived and gross negligence of one of two parties, the court will not be quick to search for negligence on the part of the other party.

"If there is a difficult question of fact for the court to decide, he may refer the case to a jury, but he is not bound to follow their decision as it is usually considered advisory only.

"Where, however, the ship involved has touched at ports of call in more than one state, the parties are entitled to a jury and trial.

"The judgment having been entered against the parties, the court will proceed to enforce its judgment by whatever process is usual and customary, and this in general follows the common law.

"A seaman injured while engaged in navigation could formerly recover only his maintenance and cure: that is, he was entitled to maintenance during the time of convalescence plus the cost of medical attention. Recent legislation has given him additional rights.

"An action for the wrongful death of a seaman may usually be maintained by reason of a state statute giving a right of action therefore. Passengers who have

been injured and shippers of freight may have their action in admiralty.

"However, many of the common law remedies have been saved to suitors by the judiciary acts, and construction of maritime law in decisions of the courts. The United States Court has no jurisdiction over boats owned by foreign governments in time of peace, but has jurisdiction over foreign boats in United States ports privately owned."

Mr. Campbell concluded with the answering of questions propounded by the members of the Round Table, and Judge Pickett in a few well chosen examples connected up many of the statements concerning admiralty with reference to the common law from an historical standpoint.

Gifts to the Library

The College acknowledges with deep gratitude the gift of Mr. Ossian Cameron, C'93, consisting of sixty-four books for the library of the college. Included among these are many of the Session Laws of the State of Illinois which our library previously lacked, and some other valuable books. With this gift we now have the session laws complete from the year 1893 in addition to some older issues which we already had.

If any alumnus of the College has any session laws previous to that year and would be willing to donate the same to the College Library suitable recognition will be made in the volume itself and lasting benefit will be thereby conferred upon the students of the College.

Sincere appreciation is also hereby expressed for the gift recently made to the College Library by Dr. Mary Elizabeth Davenport, '21, consisting of a very valuable work on the subject of Medical Jurisprudence by Wharton and Stille. The work consists of three volumes and covers Mental Unsoundness, Physical Conditions and Treatment, and Poisons.

Mr. Cameron and Dr. Davenport have made previous gifts to the college library.

Important Late Decisions

Quasi Contracts.

The plaintiff performed a surgical operation upon one B, who obtained admission to a hospital as a charity patient. The plaintiffs, who were surgeons, were ignorant at the time that he was a very wealthy man. After his death, it developed that he had left an estate of \$400,000. Could the doctors recover for the reasonable value of their services? The court answered this question in the affirmative, holding that the executors of the decedent were bound in equity and good conscience to compensate the surgeons for reasonable services. In re Agnew's Will, 230, N. Y. Supplement 519.

Agency.

Where a vendor sold portable houses to the members of a tornado relief committee which was disbursing funds donated by the public for charitable purposes, and the vendor agrees that it will look solely to the fund for payment, then the individual members of the committee cannot be held; but where the committee disburses the entire fund without inquiry as to any liability to the plaintiff, then an individual member of the committee may be held liable for damages for breach of contract. *Sears, Roebuck & Co. v. Wolf*, 246 Ill. App. 515.

Agency—Accounting.

It was held in *Johnson v. Milam* (Court of Appeals of Georgia, Division No. 2, September 1, 1928), 144 S. E. 346, that, in a suit upon an account, in which the issue was whether certain persons who purchased the goods in behalf of the defendant and for his use were authorized by him to do so, and in which there was evidence to show that the transactions were a continuation of a course of dealing in which like accounts were incurred by the same persons under like circumstances and were paid by the defendant, and that the agency of such persons to make the purchases had never been questioned, a finding in favor of the plaintiff